

27 AUG 1976

Mr. Harold R. Tyler, Jr.
Chairman, Equal Employment Opportunity
Coordinating Council
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Tyler:

This is in response to your notice in the Federal Register of 14 July 1976 (Vol. 41, No. 136, p. 29016) concerning the Equal Employment Opportunity Coordinating Council Uniform Guidelines for Employee Selection Procedures. That notice expresses your interest in obtaining views on the proposed guidelines from as many sources as possible. The comment and suggestion made herein are presented from the perspective of this Agency's rather unique missions and functions in the area of national security.

Section 3b of the proposed guidelines states that there are circumstances in which it is not feasible or not appropriate to utilize the validation techniques contemplated by the guidelines, and that, in those circumstances, the utilization of selection procedures which are as job related as possible and which will minimize or eliminate adverse impact is satisfactory. We agree. However, no indication of what such circumstances might be is made a part of the guidelines, and, in reading through the draft materials, the reader is left with the impression that the guidelines would apply similarly to all employers concerned, without taking into account significant differences between types of employers, or the unique circumstances under which certain Government agencies must function.

This Agency must often hire personnel with a view to their being competent at undertaking a great variety of job assignments during the course of their careers. Also, it is frequently the case that an employee of this Agency would undertake an assignment

where the ostensible job skills required would be somewhat subordinate to other qualities, such as initiative, imagination and the ability to recognize information-gathering opportunities. We are not here talking about normal administrative functions of agencies. In addition, the ability of an individual to satisfy security requirements for the handling of classified documents is a matter quite apart from ability to do a job per se.

Accordingly, it is suggested that some recognition be accorded the unique position of those Federal agencies possessing an intelligence, national defense or foreign policy function involving the development of classified information. Such recognition may be found in existing regulations at 5 CFR 713.218, which provides for the appointment of a cleared hearing examiner in EEO complaint cases when the agency involved is, by reason of law, prevented from divulging information concerning the matter complained of to a person who has not received a required security clearance. In conformity therewith, it is proposed that a paragraph "e" be added to section 2 of the draft guidelines similar to the following:

2e. These guidelines shall apply under circumstances where national security requirements are otherwise of critical importance only to the extent that national security requirements do not affect the selection procedures involved. National security requirements are not selection procedures within the meaning of this regulation. However, this does not prohibit due consideration of the special missions and functions of national security agencies in adopting valid selection procedures in accordance with these guidelines. In addition, to the extent that reporting requirements contained in this regulation conflict with existing law regarding the protection of national security information, reporting requirements may be fulfilled in such manner as to avoid such conflict.

We are pleased to have the opportunity to comment and await with interest the next revision of the proposed guidelines.

Sincerely,

(Signed) F. W. M. Jarney

F. W. M. Jarney
Director of Personnel

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